

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-MOBILE WEST LLC AND
INDEPENDENT TOWERS HOLDINGS,
LLC,

Plaintiffs,

vs.

THE CITY OF MEDINA,
WASHINGTON,

Defendant.

CIVIL ACTION NO.
2:14-cv-01455-RSL

DEFENDANT'S RESPONSE TO
INTERVENORS' MOTION FOR
RELIEF FROM BRIEFING
DEADLINE

NOTED FOR: JULY 31, 2015

The City of Medina opposes Intervenor's Motion for Relief from the Briefing Schedule (Dkt. 64).

Intervenor indicates that certain documents were provided to their counsel during a time in which the parties were having discussions concerning discovery, the timing of the same in light of the impending discovery cut-off date, and the need to stay discovery pending the outcome of the motion for entry of stipulated judgment pending before the Court. Although a stipulation was reached with the Intervenor to stay discovery, Intervenor's counsel nonetheless continued with his discovery request to an unrepresented third party consultant of the City of Medina, Stephen Lockwood, who

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Kenyon Disend, PLLC
The Municipal Law Firm
111 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

provided technical engineering review concerning telecommunications facilities and T-Mobile's need to close a significant coverage gap within the City of Medina.¹

The Intervenor now argue that these additional documents received from Mr. Lockwood justify additional briefing to the Court as it relates to the pending motion for entry of a stipulated judgment. The documents Mr. Lockwood produced, however, do not provide this Court with any additional evidence regarding the reasonableness of the proposed settlement in this matter. In fact, the additional documents that Mr. Lockwood produced to the Intervenor actually further support the position of the parties, T-Mobile and the City of Medina, that settlement as proposed here is entirely reasonable.

In support of the Plaintiff's and Defendant's Joint Motion for Entry of Stipulated Judgment, the City of Medina submitted the Declaration of Kari L. Sand (Dkt. 33). Attached to that declaration as Exhibit "A" is a May 8, 2015 letter authored by Mr. Lockwood. *Id.* at 3. Mr. Lockwood concluded that "[w]e believe that an antenna height of 75' feet (80-foot tower) would not be an unreasonable height given the demonstrated needs of T-Mobile." Mr. Lockwood made this conclusion after having considered the Richard Conroy report (Dkt. 32 at 4 – 42),² after having issued his own January 2015 report (Exhibit C to the David Bricklin Declaration (Dkt. 65-1 at 9 – 13), and after having issued his own February 2015 "Follow-On Observations and Review of Drive Test,

¹ Intervenor claim that the documents should have been previously produced to them pursuant to a Washington State Public Record Act (RCW 42.56) request for records. Intervenor are aware, however, that the City had notified them that records responsive to their request would not be produced until August 28, 2015 to ensure a thorough search and review of the records responsive to the request and that the City would be providing Independent Towers and T-Mobile third-party notification pursuant to RCW 42.56.540. Moreover, the Lockwood Reports would likely not be produced in response to record request because those reports constitute attorney work product and F.R.E. 408 documents related to settlement and, as such would not be subject to disclosure.

² Mr. Conroy also prepared a report dated January 27, 2015, reviewed and considered by Mr. Lockwood, but for brevity purposes, it is not included here.



1 Analysis and Supplemental Report for T-Mobile Site” (“Follow-on Observations”).
2 Bricklin Decl. Exhibit D (Dkt. 65-1 at 15 – 18).

3 In Mr. Lockwood’s review of the original Conroy report, Mr. Lockwood
4 identified areas where additional information and data would be helpful to his analysis.
5 Richard Conroy did provide that additional information and data, and Mr. Lockwood was
6 fully satisfied with the same. Mr. Lockwood notes in his Follow-On Observations that
7 “[t]he follow-on Report provided additional information that we found lacking in the
8 original report. The following deficiencies were sufficiently addressed in the follow-on
9 report. . .” Id. at 16.

10 Mr. Lockwood then concludes that “if additional co-location is a desirable issue
11 then additional height beyond 65’ [70 foot tower] would be reasonable. The height of 65’
12 would allow for one additional carrier below the T-Mobile antennas at the top of the
13 monopole.” Id. at 17. Co-location is a greatly desirable issue for the City of Medina.
14 The City Council’s adopted policy direction and cell tower locating criteria require co-
15 location to ensure that, in addressing coverage gaps, such towers are not overly intrusive
16 upon the residents of the City. Co-location reduces the level of intrusion by reducing or
17 eliminating the proliferation of many separate monopoles. One pole upon which multiple
18 carriers may place their facilities is accordingly desired.

19
20 Mr. Lockwood acknowledged in his Follow-On Observations, “It is clear to us
21 that the height choice is based on engineering judgment, future expansion, and co-
22 location issues.” Id. at 16 – 17.

23 Richard Conroy generated his report on May 6, 2015 (Dkt. 32 at 4 – 42). Based
24 on Mr. Lockwood’s foregoing review and analysis, and based on his review of Conroy’s
25

1 report, Mr. Lockwood concluded, “[t]his report makes the case for gaps in coverage in
 2 the T-Mobile system in the Medina area. It documents these gaps in coverage by
 3 providing the results of drive tests and also demonstrates that an 80-foot tower (antenna
 4 center of 75 feet) is an acceptable solution to these coverage deficiencies. We find the
 5 discussion internally consistent and reasonable.” Sand Decl., Ex. A (Dkt. 33 at 3).

6 In sum, the additional reports that the Intervenor’s claim raise issues as to the
 7 reasonableness of the settlement proposed, actually do nothing of the sort. Those reports
 8 are entirely consistent with the information from Mr. Lockwood previously filed by the
 9 City with the Court in support of the proposed settlement. These additional reports
 10 highlight the fact that Mr. Lockwood engaged in a considered and in-depth analysis of T-
 11 Mobile’s coverage gap issues and its tower needs, and demonstrate that the proposed
 12 settlement is wholly reasonable.

13 DATED this 29 day of July, 2015.

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16 KENYON DISEND, PLLC

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18 By s/ Robert F. Noe

19 Robert F. Noe
 20 WSBA No. 19730
 11 Front Street South
 Issaquah, WA 98027-3820
 Phone: 425-392-7090
 Fax: 425-392-7071
 Email: bob@kenyondisend.com
 Attorneys for Defendant City of
 Medina



DECLARATION OF SERVICE

I, Kathy Swoyer, declare and state:

1. I am a citizen of the State of Washington and the United States, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

I hereby certify that on July 29, 2015, I electronically filed the foregoing *Defendant's Response to Intervenor's Motion for Relief from Briefing Deadline* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Linda Gayle White Atkins**
lindaatkins@dwt.com, ScottThompson@dwt.com, DanielReing@dwt.com, lynnmichel@dwt.com, sheilacroisier@dwt.com
- **David A Bricklin**
bricklin@bnd-law.com, cahill@bnd-law.com, miller@bnd-law.com
- **Medina Residents**
imorrison@mhseattle.com
- **Claudia Newman**
newman@bnd-law.com
- **Robert Franklin Noe**
bob@kenyondisend.com, sheryl@kenyondisend.com, bob.noelaw@gmail.com, mary@kenyondisend.com, Mike@kenyondisend.com, kathy@kenyondisend.com, margaret@kenyondisend.com
- **Daniel P. Reing**
DanielReing@dwt.com, WCDocket@dwt.com, GinaLee@dwt.com
- **Richard M Stephens**
LHall@GSKlegal.pro, stephens@GSKlegal.pro
- **Thomas Scott Thompson**
ScottThompson@dwt.com, PauletteHumphries@dwt.com



1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
2 true and correct.

3 DATED this 29th day of July, 2015, at Issaquah, Washington.

4 
5 Kathy Swoyer